



MINUTES

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
REGULAR MEETING
11:00 a.m., Thursday, April 19, 2012
Police and Fire Department Headquarters—Arizona Room
8401 E. Indian School Road
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairman/Mayoral Designee
Jeffrey Burg, Citizen Member
James Butera, Elected Member
Velicia McMillan, Citizen Member/Merit Head
Jeffrey Walther, Elected Member

STAFF: Colleen Barraza
Ken Nemec
Chanda Washington

OTHERS: Mike Anthony, Esq.
Hannah Auckland, Esq.
Kristine Harrington, KTVK 3TV
Mike Harris, Ch. 5
Ofelia Madrid, Arizona Republic
Police Officer James H. Powers (via telephone)
Steve Sutton, Public
Hatzel Vela, ABC15

Call to order

Chairman Cross called the meeting to order at 11:02 a.m.

Roll call

A formal roll call confirmed the members present as stated above.

1. Review and approval of meeting minutes—March 15, 2012

BOARD MEMBER WALTHER MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE MARCH 15, 2012 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

2. Induction of new Scottsdale police officers into PSPRS

Mr. Nemec reported that Police Officers Cody Lutz, Paul Larsen, and Michael Haas were new Scottsdale police officers hired in November 2011 having a PSPRS membership effective date of April 6, 2012.

He pointed out that two of the new police officers had a pre-existing condition as noted on the PSPRS Police Induction List dated April 19, 2012.

BOARD MEMBER WALTHER MOVED TO APPROVE THE INDUCTION OF NEW SCOTTSDALE POLICE OFFICERS (CODY LUTZ, PAUL LARSEN AND MICHAEL HAAS) INTO PSPRS EACH WITH AN EFFECTIVE DATE OF APRIL 6, 2012 AND WITH PRE-EXISTING CONDITIONS, IF ANY, AS NOTED ON THE ATTACHED LISTING. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

Chairman Cross recommended that the Board move ahead to agenda item number 5 regarding Police Officer James R. Peters, II.

3. Discussion and vote on the Ordinary Disability Retirement application of Police Officer James H. Powers

Chairman Cross announced that Police Officer James H. Powers was attending today's meeting by telephone in order to answer any questions by the Board.

Ms. Washington reported that Police Officer Powers currently has an ordinary disability retirement application to be reviewed by the Board.

She explained that the Board Members' notebooks contain additional documentation consisting of two prior IME reports resulting from the Applicant's prior accidental disability retirement application, which was denied by the Board on January 25, 2012 as well as new medical evidence supplied by the Applicant's treating physician which reflects that Police Officer Powers was considered totally and permanently disabled from July 2011 through March 2012.

Ms. Auckland discussed the fact that the Board's legal counsel has additional information to convey regarding this application and unique circumstances related to its history to be discussed during executive session. She recommended that this discussion be tabled until staff has scheduled another meeting with proper notification being sent out.

Chairman Cross agreed with Ms. Auckland's recommendation that the Board table the discussion of Police Officer James H. Powers' ordinary disability retirement application until staff has scheduled another meeting and sent out the proper agenda notice for executive session. He stated that the Board should hold off asking questions regarding which IME physician the Applicant should be sent to until the next meeting.

Ms. Washington reported that Police Officer Powers is currently receiving long term disability benefits, noting that he is not receiving anything from Public Safety.

In response to Chairman Cross' inquiry regarding whether Police Officer Powers would like staff to schedule a special meeting or wait until the Board's monthly meeting scheduled for May 17, 2012, Police Officer Powers responded that the sooner this matter was addressed the better.

BOARD MEMBER WALTHER MOVED TO TABLE THE DISCUSSION OF THE ORDINARY DISABILITY RETIREMENT APPLICATION OF POLICE OFFICER JAMES H. POWERS UNTIL A FUTURE SPECIAL MEETING IS SCHEDULED BY STAFF. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

CLOSED PUBLIC HEARING

4. Motion to recess into executive session for discussion of Ordinary Disability Retirement application of Police Officer James H. Powers

Chairman Cross confirmed that the Board could not recess into Executive Session during today's meeting due to the lack of a proper agenda notice.

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

5. Discussion and vote on the Ordinary Disability Retirement application of Police Officer James R. Peters, II

Chairman Cross announced that the Board was charged with determining whether or not there was sufficient evidence in the documentation provided by Police Officer James R. Peters, II in order to send him for an independent medical examination.

He invited the Board's legal counsel Mike Anthony to explain the executive session complications he recently identified during his perusal of today's meeting agendas.

Mr. Anthony explained that any medical evidence submitted with a disability benefit application is confidential and protected by state and federal law. This evidence cannot be disclosed publicly unless the Applicant signs a disclosure waiver. Since Police Officer Peters has not signed such a waiver they must keep the medical evidence confidential. It could only be discussed in executive session.

The Board must refrain from holding executive session today because the executive session agenda notice does not reference the public meeting law subsection that allows the Board to hold executive session.

Mr. Anthony invited the Board to discuss whether the medical documentation supplied by the applicant was sufficient enough to send him for an IME at this time, reserving discussion of the medical evidence until the IME is complete and the Board has received the IME report.

He elaborated that should the Board require an executive session discussion before moving forward with Police Officer Peters' application, staff must reschedule a future meeting and notice that meeting with the proper agenda.

Mr. Anthony explained for the benefit of the media present that this quasi-judicial Board must exercise mixed authority that is both administrative and judicial in nature. For that reason the Board Members are not permitted to discuss any case pending before them.

Chairman Cross inquired whether the Board was ready to move forward with Police Officer Peters' accidental disability retirement application and received a unanimous consensus to send the applicant for an IME.

BOARD MEMBER WALTHER MOVED TO APPROVE THE ISSUANCE OF AN INDEPENDENT MEDICAL EXAMINATION THROUGH ONE OF THE BOARD'S CONTRACTED MEDICAL PROVIDERS FOR THE APPOINTMENT OF A MEDICAL SPECIALIST TO SERVE AS THE MEDICAL BOARD FOR THE APPLICATION OF POLICE OFFICER JAMES R. PETERS, II. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

Chairman Cross recommended that the Board continue with agenda item number 3 regarding Police Officer James H. Powers after a short recess.

(Recess occurred from 11:09 a.m. to 11:13 a.m.)

CLOSED PUBLIC HEARING

6. Motion to recess into executive session for discussion of Ordinary Disability Retirement application of Police Officer James R. Peters, II

Chairman Cross deemed it unnecessary to recess into Executive Session during today's meeting.

**RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING
FOLLOWING EXECUTIVE SESSION**

7. Discussion of letter to the Scottsdale Fire PSPRS Board from Board attorneys Hanna Auckland and Mike Anthony concerning legal standards governing causation and medical certainty in accidental disability cases.

Chairman Cross stated that the Board must decide whether they would like legal counsel's March 15, 2012 letter to the Scottsdale Fire PSPRS Local Board regarding legal standards governing causation and medical certainty in accidental disability cases to become a public document.

Ms. Auckland explained that it is up to the Board to decide whether this private document should become a public document, since it relates to general legal standards found in case law.

Upon further discussion, the Board agreed to discuss legal counsel's document during open session.

Ms. Auckland recalled that during a prior Scottsdale Fire PSPRS Local Board meeting questions arose regarding causality issues related to ordinary or disability pension applications. She summarized that the letter addresses causation requirements related to disability pensions, Arizona case law, and statutory provisions requiring an applicant to show that they suffer from a mental or physical condition that totally prohibits them from performing a reasonable range of duties as a result of performing their employment duties.

8. Report to the Board on recently completed transfers to prior service credits

Ms. Washington explained that the service transfer chart reflects the transfer of prior service credits made by Paul Chavez and Angel Ramirez as discussed at last month's meeting in addition to the employer portion of the transfer as requested by the Board.

Ms. Washington reported that Ryan Christian transferred .395 years of service from the City of Scottsdale ASRS to the PSPRS in the amount of \$2,220.61 in addition to submitting a personal check in the amount of \$2,664.39 for a total of .638 years of service credits.

She stated that Darren Szczepanski transferred .08 years of service from the City of Scottsdale ASRS to the PSPRS in the amount of \$776.83 for a total of .288 years of service credits.

Paul Wein transferred 3.0 prior years of service from the Merrillville, Indiana Police Department in the amount of \$77,536.27 in addition to submitting a personal check in the amount of \$3,191.85 for a total of 13.505 years of service credits.

9. Board suggestions for upcoming agenda items

Chairman Cross confirmed there were no suggestions for upcoming agenda items.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 11:25 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Police Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee